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Attorneys for Defendant
Yokohama Tire Corporation

SUPERIOR COURT OF THE STATE OF ARIZONA
NAVAJO COUNTY

MERLYNN PUHUYAOMA as
Guardian and Conservator of Leelyn
Humphrey and Seinna Humphrey, AND
ON BEHALF OF THE STATUTORY
BENEFICIARIES OF Barry Alan
Humphrey, deceased,

Plaintiffs,

vs.

YOKOHAMA TIRE CORPORATION,
a California corporation; ACCUSHINE,
INC., an Arizona corporation, dba
ACCUSHINE AUTO SALES; JOHN
and JANE DOES I-X; and ABC
COMPANIES I-X,

Defendants.

CASE NO. S0900CV201800316

**NOTICE OF FILING NOTICE OF
REMOVAL TO FEDERAL COURT**

**TO THE CLERK OF THE ABOVE-ENTITLED COURT, PARTIES, AND THEIR
ATTORNEYS**

PLEASE TAKE NOTICE that a Notice of Removal of this action was filed by
Defendant Yokohama Tire Corporation in the United States District Court for the District
of Arizona on August 1, 2018. A copy of the Notice of Removal (without exhibits) is

1 attached hereto as Exhibit 1, and is served and filed herewith.

2 Pursuant to 28 U.S.C. § 1446, the filing of the Notice of Removal in the United
3 States District Court, together with the filing of a copy of the Notice of Removal with this
4 Court, effects removal of this action and the above-captioned court may proceed no
5 further unless or until the case is remanded.

6
7 Dated this 1st day of August, 2018.

8 GORDON REES SCULLY
9 MANSUKHANI, LLP

10
11 By: /s/ Brian R. Booker
12 Brian R. Booker

13 Attorneys for Defendant
14 Yokohama Tire Corporation

15 ORIGINAL electronically filed this
16 1st day of August, 2018, with copies mailed to:

17 Robert W. Boatman
18 Shannon L. Clark
19 Gallagher & Kennedy, P.A.
20 2575 East Camelback Road
21 Phoenix, Arizona 85016-9225
22 *Attorneys for Plaintiffs*

23 Jacob Speckhard
24 Jones Skelton Hochuli, PLC
25 40 N. Central Ave., Suite 2700
26 Phoenix, AZ 85004
27 *Attorneys for Defendant Accushine, Inc.*

28
29 By: Angelina Chavez

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EXHIBIT 1

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Attorneys for Defendant
Yokohama Tire Corporation

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Merlynn Puhuyaoma as Guardian and)	CASE NO.
Conservator of Leelyn Humphrey and)	
Seinna Humphrey, and on behalf of the)	
statutory beneficiaries of Barry Alan)	NOTICE OF REMOVAL
Humphrey, deceased,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
Yokohama Tire Corporation, a)	
California corporation; Accushine, Inc.,)	
an Arizona corporation, dba Accushine)	
auto Sales; John and Jane Does I-X; and)	
ABC Companies I-X,)	
)	
Defendants.)	

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Yokohama Tire Corporation (“Yokohama”) hereby removes this action from the State of Arizona, Navajo County Superior Court to this Court. This Court has diversity jurisdiction under 28 U.S.C. § 1332(a)(1). The grounds for removal are the following:

1. Plaintiff Merlynn Puhuyaoma, with the filing of the Complaint,

1 commenced this action in the Navajo Superior Court on June 26, 2018, in Case Number
2 CV2018-00316 (the “Superior Court Action”).

3 2. Plaintiffs are residents of Navajo County, Arizona.

4 3. Defendant Yokohama is a California corporation.

5 4. Defendant Accushine Auto Sales (“Accushine”) is an Arizona corporation.

6 5. The Complaint asserts two causes of action against Yokohama and
7 Accushine: strict products liability and negligence.

8 6. The Complaint alleges that Accushine sold the tire at issue in a condition
9 that was defective, unfit, and unreasonably dangerous for its intended and foreseeable use
10 and that Accushine is strictly liable for Plaintiffs’ damages.

11 7. A seller of a used product cannot be held strictly liable for harm to persons
12 or property without evidence that the defect satisfies one or more conditions, including
13 but not limited to, the defect arises from the seller’s failure to exercise reasonable care,
14 the defect is a defect in a used product remanufactured by the seller or a predecessor in
15 the commercial chain of distribution of the used product, or the defect arises from a used
16 product’s noncompliance with a product safety statute or regulation applicable to the used
17 product. Restatement (Third) of Torts: Products Liability § 8 (Am. Law Inst. 1998).

18 8. The Complaint does not make any allegations of negligent conduct of
19 Accushine and states instead that, “Upon belief, Defendant Yokohama may argue that
20 Accushine was negligent in its service or inspection of the subject tire. In such event,
21 Plaintiffs adopt their allegations in an abundance of caution and to avoid a non-party at
22 fault designation.” (Compl. at ¶ 41.)

23 9. As of the filing of this Notice, Yokohama has no evidence to suggest that
24 Accushine is a proper nonparty at fault.

25 10. Accushine is therefore a placeholder defendant identified to defeat diversity
26 jurisdiction in this Court.

27 11. Yokohama received a copy of the Complaint on July 2, 2018. The
28 Complaint, Certificate of Arbitration, and Demand for Jury Trial are attached as **Exhibit**

1 A.

2 12. Removal is timely under 28 U.S.C. § 1446(b) because this Notice is filed
3 within 30 days after receipt by Yokohama of the Complaint and Request for Waiver of
4 Service of Summons, and within one year of the commencement of the action.

5 13. Under 28 U.S.C. § 1441, this Court is the appropriate forum in which to file
6 this Notice of Removal because the United States District Court for the District of
7 Arizona is the federal judicial district embracing Navajo County, Arizona, the county in
8 which the Superior Court Action was filed.

9 14. This is a civil action over which this Court has original jurisdiction
10 pursuant to 28 U.S.C. § 1332 because it is a civil action between citizens of different
11 States and the amount in controversy exceeds \$75,000. This action may therefore be
12 removed to this Court by Yokohama under the provisions of 28 U.S.C. § 1441(b).

13 15. Pursuant to 28 U.S.C. § 1446 and LRCiv 3.6(a), counsel for Yokohama has
14 caused a copy of this Notice of Removal to be filed in the Superior Court Action. A copy
15 of the state court notice (without exhibits) is attached as **Exhibit B**.

16 16. Undersigned counsel verifies that a true and correct copy of all pleadings
17 and other documents filed in the State Court Action in Yokohama's possession are
18 attached hereto as **Exhibits A and B**.

19 17. By filing this Notice of Removal, Yokohama does not waive any objections
20 it may have to service, jurisdiction, or venue, nor does it waive any other defenses that it
21 may have to this action. Yokohama makes no admission of fact, law, or liability, and
22 expressly reserves its right to assert all available defenses and to bring any applicable
23 motions.

24 WHEREFORE, Defendant Yokohama Tire Corporation respectfully requests that
25 this Notice of Removal be filed, the Superior Court Action be removed to and proceed
26 hereafter in this Court, and no further proceedings be had in the Superior Court of Navajo
27 County, Arizona.

28

1 Dated this 1st day of August, 2018.

2 GORDON REES SCULLY
3 MANSUKHANI, LLP

4
5 By: /s/ Brian R. Booker
6 Brian R. Booker

7 *Attorneys for Defendant*
8 *Yokohama Tire Corporation*
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CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2018, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing.

I further certify that on August 1, 2018, I served the foregoing document by mailing same to the following:

Robert W. Boatman
Shannon L. Clark
Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225

Attorneys for Plaintiffs

Jacob Speckhard
Jones Skelton Hochuli, PLC
40 N. Central Ave., Suite 2700
Phoenix, AZ 85004

Attorneys for Defendant Accushine, Inc.

/s/ Angelina Chavez

Angelina Chavez

From: CustomerService=turbocourt.com@smtp.turbocourt.com on behalf of TurboCourt Customer Service <CustomerService@TurboCourt.com>
Sent: Wednesday, August 01, 2018 6:17 PM
To: Annelise Dominguez; Angelina Chavez; Natalie Tanner
Subject: AZTurboCourt E-Filing Courtesy Notification

PLEASE DO NOT REPLY TO THIS EMAIL.

A party in this case requested that you receive an AZTurboCourt Courtesy Notification.

AZTurboCourt Form Set #2728976 has been DELIVERED to Navajo County - Superior Court.

You will be notified when these documents have been processed by the court.

Here are the filing details:

Case Number: S0900CV201800316 (Note: If this filing is for case initiation, you will receive a separate notification when the case # is assigned.)

Case Title: MARLYNN PUHUYAOMA et al. v. YOKOHAMA TIRE CORPORATION et al.

Filed By: Brian R Booker

AZTurboCourt Form Set: #2728976

Keyword/Matter #: SJA-1161643 Notice of Removal to District Court

Delivery Date and Time: Aug 01, 2018 6:17 PM MST

Forms:

Summary Sheet (This summary sheet will not be filed with the court. This sheet is for your personal records only.)

Attached Documents:

Notice: Notice: Notice of Filing Notice of Removal to Federal Court

Exhibit/Attachment (Supporting): Exhibit 1